STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7655

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| Petition of Apple Island Resort vs. Vermont Electric Cooperative, Inc., and petitions of James Poitras and William C. Fredette vs. Apple Island Resort, in re: disputes concerning charges for use of electricity at the Apple Island Resort, located in South Hero, Vermont | ) ) ) ) ) ) |

Order entered: 3/16/2011

## I. INTRODUCTION

This proceeding involves three related petitions that were consolidated in this docket. The first petition involves a complaint by Apple Island Resort ("AIR") concerning the charges for electric power supplied to it by Vermont Electric Cooperative, Inc. ("VEC"). AIR seeks relief from the application of a demand billing provision (often referred to as a demand ratchet charge) in VEC's tariff for large general service customers. AIR contends that the demand billing provision is unfairly applied to AIR and results in exorbitant demand charges. In this proposal for decision, I conclude that there is no basis to support AIR's claims for relief against VEC and recommend to the Public Service Board ("Board") that it dismiss AIR's complaint against VEC.

The other two petitions involve complaints and requests for relief from two owners of deeded use sites at the resort ("AIR Customers") against AIR related to electric charges billed by AIR. I conclude that the flat-rate monthly charges imposed by AIR violate 30 V.S.A. § 249a and applicable Board Rules. I recommend to the Board that it require AIR provide a credit on 2011 electric bills or refunds in an amount equal to the flat-rate monthly charges paid by any AIR customer.

## II. BACKGROUND AND PROCEDURAL HISTORY

AIR operates a seasonal campground business in South Hero, Vermont, and is a large seasonal user of electricity from May to October, with its demand typically peaking in July or

August.[1] Under a demand billing provision in VEC's tariff for large general service customers that became applicable to an AIR account in 2009, AIR is currently subject to significant monthly demand charges throughout the year, based on its peak summer demand.[2]

AIR filed a letter with the Board on December 10, 2009, in which AIR asserted that the demand billing provision in VEC's rate schedule for general service customers was being "unfairly applied to AIR" and that the demand charges were "exorbitant." AIR petitioned the Board "to relieve AIR from demand billing by VEC" or "to reduce the burden of the demand ratchet provision during the winter months when AIR is closed." In response to a request by the Clerk of the Board, VEC filed a detailed response to the AIR Petition on February 11, 2010.

AIR provides submetered electric service to certain seasonal campground users pursuant to 30 V.S.A. § 249a. Beginning in 2010, AIR has sought to recoup a portion of the VEC demand charges from its submetered campground electric customers, including the AIR Customers, through a flat-rate monthly charge added to such customers' electric bills (which also includes a per kWh energy-usage component). Mr. James Poitras, on July 13, 2010, and Mr. William C. Fredette, on August 10, 2010, filed complaints with the Board challenging the legality of AIR's flat monthly charges.[3] Taken together, these two complaints contend that the flat-rate monthly charge is illegal, excessive and/or inappropriately calculated and seek a refund or credit for overpayments made to AIR.

On August 31, 2010, I convened a prehearing conference in this docket. None of the parties, except for VEC, was represented by counsel. At the prehearing conference, it became apparent that neither the AIR Customers nor any representative of AIR would likely be available to attend any proceedings in this docket beyond mid-October. Given the relative absence of

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1. AIR apparently is owned by AIR Development, LLC, and managed by a company named Uniprop. It appears that Mr. Paul Zlotoff is an officer and owner of both companies. Prehearing conference tr. 8/31/10 at 6.

2. This demand billing provision was part of a rate design change that was approved by the Board in November, 2007, and the demand billing provision became effective, after a Board-approved postponement, on November 1, 2008.

3. Board Rule 4.808(C) provides that campground customer complaints that are not resolved by the campground or by the Consumer Affairs and Public Information Division of the Vermont Department of Public Service ("Department") may be brought to the Board. A letter dated July 27, 2010, from the Department that was attached to Mr. Fredette's complaint against AIR indicates that the matter was brought to the Department, but that the Department was unable to resolve the matter with AIR.

significant disputes concerning the relevant facts and the desire to avoid postponing resolution of this matter until the 2011 summer season, the parties at the prehearing conference were amenable to resolving this matter based on their filings without a technical hearing. A schedule was established under which the parties were given an opportunity for discovery and to make additional filings of relevant information, disputed facts, briefs and responses to briefs.[4]

None of the parties made any subsequent filings disputing any facts or making any objection to the admission of any of the filings or material submitted by the other parties.[5] None of the parties filed briefs, except for VEC which filed a short letter on October 15, 2010, stating that AIR had not provided any basis for the Board to conclude that VEC violated its tariff or any statute, rule or order of the Board. VEC noted that VEC would, in fact, be in violation of its tariff if it charged AIR anything less than its tariffed rate. VEC also stated that it gave AIR notice of the tariff change and worked with AIR to mitigate its impacts. AIR did not file any response to VEC's brief, nor to the earlier VEC Response. VEC also filed an affidavit on September 17, 2010, providing additional information about a spreadsheet provided to the Board and the other parties at the prehearing conference and about recommendations VEC has made to AIR to reduce its peak electric demand.

The following items are admitted into the record in this docket in accordance with the understandings reached at the prehearing conference and the absence of any subsequent objection to their admission into the record:

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4. *See* Prehearing Conference Memorandum and Order of 9/10/10 in this docket.

5. Mr. Paul Zlotoff, the President of Uniprop which manages AIR, submitted a letter to the Board on September 13, 2010, in which he advised the Board that AIR had modified its methodology for allocating and billing electric charges and had notified it customers by letter, dated September 8, 2010, that it was switching from a flat-rate demand charge on its campground customers to a per customer actual usage rate of $0.252 per kWh. The rate of $0.252 per kWh was apparently determined by dividing the total amount of AIR electric charges during the period from September, 2009, through August, 2010, by the total amount of kWh energy usage by AIR during that period. As the Clerk of the Board indicated in a memorandum dated September 20, 2010, AIR's letter was deficient as a filing in this docket as it apparently was not provided to all the parties in the docket. No explanatory nor corrective filing was subsequently made by AIR. In a letter filed with the Board on September 23, 2010, Mr. Fredette objected to the new rate established unilaterally by AIR stating that AIR's new methodology was unacceptable "as AIR is trying to recoup all the Demand Charge for the entire year." As discussed below, issues related to the appropriateness of AIR's new billing methodology and practice are not addressed in this proposal for decision.

1. Letter and attachments filed with the Board by AIR on December 10. 2009, complaining about the application to AIR of the demand billing provision in VEC's rate schedule ("AIR Petition");

2. Letter and attachments filed with the Board by VEC on February 12, 2010 ("VEC Response");

3. Letter and attachments filed with the Board on July 13, 2010, by James Poitras ("Poitras Petition");

4. Letter and attachments filed with the Board on August 10, 2010, by William C. Fredette ("Fredette Petition").

5. The affidavit of David Lahar, Key Accounts Manager for VEC, filed with the Board on September 17, 2010, together with a one-page spreadsheet (which was previously provided to Board and the other parties by VEC at the prehearing conference) that shows electric usage and charges for AIR for the period from September, 2009, to August, 2010 ("Exhibit VEC-1"); and

6. Additional documents and materials provided by Mr. Fredette to the Board and the other parties at the prehearing conference, including a letter, dated June 4, 2010, to AIR residents from the manager of AIR advising residents about the flat-rate monthly charge, a copy of an invoice received by Mr. Fredette, a description prepared by Mr. Fredette of issues related to meters for common areas and facilities (including exhibits), and copies of photographs of certain buildings and facilities at AIR (collectively, "Exhibit Fredette-1").

## III. FINDINGS

1. AIR is a seasonal resort in South Hero, Vermont, that operates from May 1 to October 20. AIR Petition at 1.

2. VEC provides electric service to AIR under its current rate schedule for general service customers that includes a demand billing provision for large customers that exceed 15,000 kWh of usage for two consecutive months. VEC Response at 1; Tariff No. 7914.

3. Based on its electric usage, AIR has been subject to the demand billing provision since July, 2009. VEC Response at 2; AIR Petition at 1.

4. VEC filed the rate design change that resulted in the demand billing charges to AIR on August 27, 2007. Attachment 1 to VEC Response; Tariff Filing No. 7914.

5. VEC provided a general notice to all VEC customers of the rate design proceeding[6] and, upon the Board's approval of the rate design change on November 21, 2007, provided notice of the new approved rates. Attachments 1 and 2 (at 3) to VEC Response.

6. After the rate design change became effective, VEC sought, and the Board granted, a nine-month postponement of the implementation date to November 1, 2008, in order "to give customers such as Apple Island Resort the time to work with VEC and Efficiency Vermont to reduce load, modify usage, and/or adjust the charges to their submetered accounts."[7] VEC Response at 1 and Attachments 2 and 3.

7. By letter dated June 17, 2008, VEC provided specific notice to AIR that under the new rate design, AIR would likely be subject to significant demand charges throughout the year based on its peak summer demand and enclosed a spreadsheet demonstrating the potential impact of such charges.[8] Because of the Board's subsequent approval on June 23, 2008, of a postponement in the effective date of the demand billing provision, AIR was not subject to demand charges in 2008. VEC Response at 1, 2, Attachments 4, 5 and 6.

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6. Board records indicate that the notice to customers referenced the proposed rate design change, including the elimination of seasonal rates, and the February 1, 2008, implementation date, and attached a table setting forth the proposed rate design changes, including the proposed demand billing rate per KW for large general service customers.

7. In the petition to delay implementation, filed with the Board on June 10, 2008, VEC indicated that there were a number of small summer-peaking commercial customers, "predominantly campgrounds and similar recreational establishments," that would be very significantly affected by the rate design change. In support of the delay, VEC noted that these VEC customers had already established the rates they would charge their own customers for the 2008 summer season, apparently, without taking into account the effect of the demand billing provision on their VEC electric bills. In order to provide more time for these customers to plan for the magnitude of the rate increase and, if possible, adjust their usage, VEC believed a delay in implementation would be appropriate. On June 23, 2008, the Board notified VEC that it approved the requested delay in the implementation of the change in the demand billing provision until November 1, 2008. As a practical matter, for summer peaking seasonal customers, such as AIR, this meant that the impact of the demand billing provision would be postponed from the 2008 summer season to the 2009 summer season. This delay gave AIR, and similarly situated VEC customers, an additional year to plan, adjust and, for submetering campgrounds, to determine the appropriate rates for their submetered customers. As noted below, AIR apparently did not include the demand billing charges in setting the rates for its submetered customers during the 2009 summer season.

8. The spreadsheet set forth AIR's electric charges under then-current rates and what the projected charges would be based on historic usage under the rate design change. Attachment 4 to VEC Response.

8. VEC provided additional notice to AIR in a letter, dated May 28, 2009, as to the likely applicability of demand charges to AIR's account in 2009, which included a spreadsheet comparison of actual and projected charges, and then provided an updated spreadsheet to AIR by email on October 1, 2009. Attachments 6 and 7 to VEC Response.

9. In addition, VEC had several phone conversations with AIR personnel, conducted a site visit in July, 2008, and encouraged AIR to contact Efficiency Vermont. VEC Response at 4 and Attachment 8.

10. The AIR Customers are seasonal residents of AIR, occupying sites that are among the 117 sites for which AIR provides submetered electric service. Poitras Petition at 1; Fredette Petition at 2; VEC Response at 4.[9]

11. Beginning with its May, 2010, statement of electric charges, AIR assessed a flat montly charge of $43.58 plus tax (or $46.20, including tax) on seasonal residents receiving submetered electric service, including the AIR Customers. Poitras Petition at 1; Fredette Petition at 1; Exhibit Fredette-1 (letter, dated June 4, 2010, from manager of AIR accompanying May, 2010, billing statement).

## IV. DISCUSSION WITH RESPECT TO AIR COMPLAINT VS. VEC

VEC's tariff for general service customers includes a demand billing provision that provides that a general service customer whose electric usage exceeds 15,000 kWh for two consecutive months will be assessed a billing demand charge based on 80% of its highest billing demand during the preceding 11 months. Once the billing demand provision is applicable, the per kWh energy charge is reduced and the demand charge is applied and billed monthly throughout the year.

The only filing that AIR has made in this docket is the AIR Petition. AIR has presented no evidence that indicates that VEC has violated any tariff, statute, rule or order of the Board.[10] AIR does not dispute that its electric usage has exceeded 15,000 kWh for two consecutive months or that VEC has properly calculated the demand charge under VEC's approved tariff for

9. *See, also*, Prehearing Conference transcript, 8/31/10 at 7-9.

10. *See* Board Rule 2.304.

general service customers. Instead, AIR makes essentially an equitable argument that the application of the demand billing provision to it is unfair and that the demand charge is exorbitant. As a seasonal user of electricity, AIR notes that it is impossible for it to reduce seasonal fluctuation of electrical usage and to maintain a consistent pattern of usage throughout the year.

There is no question that AIR's rates for electric service have increased significantly as a result of rate design changes in VEC's tariff.[11] The Board approved the rate design changes in November, 2007, and the demand billing provision was implemented, after an approved delay for summer-peaking customers such as AIR, such that the demand billing provision did not apply to AIR until the summer of 2009.[12] These rate design changes, among other things, established a uniform set of rates throughout VEC's service territory and eliminated seasonal rates in the former Citizens Utilities' service territory. Prior to these rate design changes, the demand billing provision was triggered only in the case of high winter demand for VEC general service customers in the former Citizens Utilities' service territory. Summer-peaking customers, such as AIR, were not previously affected by the demand billing provision.

The elimination of seasonal distinctions in the application of demand billing charges is consistent with the actions of other Vermont utilities, which have been motivated in part by the fact that electric demand in Vermont no longer peaks predominantly in the winter. In general, the Board has been supportive of demand billing charges and the elimination of seasonal rate distinctions. The intention behind demand billing rate design is to provide a means for the recovery of the actual costs of serving customers, such as AIR, that have large swings in electric demand during the year. A utility's fixed costs, including costs related to the capacity and infrastructure necessary to serve a customer, are similar for a customer with significant variations in demand and for other customers; yet, in the absence of demand charges, customers whose use

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11. According to a rate comparison that VEC provided to AIR on October 1, 2009, AIR's electric charges for the period from October, 2008, to September, 2009, were $63,541, but would have been $103,576 for such period if the demand billing provision had been applied to AIR during that period. Attachment 7 to VEC Response.

12. AIR did not attempt to pass through the additional costs related to the demand billing provision to its submetered electric users during the 2009 summer season, but apparently billed these users at the same usage rates as before. *See* letter, dated June 4, 2010, from manager of AIR to residents included in Exhibit Fredette-1.

of electricity is relatively constant throughout the year will, in effect, be subsidizing the utility's fixed costs associated with serving seasonal customers.[13] Significant variations in customer demand at any time during the year also have the potential to increase the costs of purchasing wholesale electric power either through contract or market purchases. In addition, in the case of a customer like AIR whose annual peak demand for service in July and August is often coincident with the system load peak of VEC and the Northeast region as a whole, there may be a significantly higher marginal cost at those times for acquiring the wholesale power necessary to meet such customer's peak demand. As a general matter, AIR seems to be precisely the type of customer for which the demand billing provision was designed.

Even if there were merit to AIR's claim that the demand charges were unfair and excessive in terms of the specifics of the demand charge methodology and its application to AIR (for which AIR has offered no evidence), the ability of a customer to obtain rate relief from a tariff once it becomes effective is extremely limited.[14] In addition, as the record clearly indicates, AIR had more than ample opportunity to challenge the rate design change before its effectiveness and implementation.[15] AIR did not file any objection to the proposed demand billing provision during the period that VEC's rate design change was under consideration by the Board or while its implementation was delayed.

Accordingly, based on the above findings and discussion, I conclude that there is no basis in the record to support AIR's complaint and recommend to the Board that it dismiss AIR's complaint against VEC.

As a separate matter, it should be noted that the adjudication of customer complaints is not the only means the Board has to address unfair or excessive rates. The Board has express

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13. VEC Response at 3.

14. Among other considerations that may be applicable is the longstanding approved or filed rate doctrine that has been widely adopted throughout the United States. The filed rate doctrine provides that once a utility's rate schedule has been approved by the governing regulatory agency, such rate schedule is deemed to be reasonable and not subject to challenge in judicial proceedings brought by ratepayers. *See*, for example, *Wegoland Ltd. v. NYNEX Corp*., 27 F.3d 17, 18 (2d Cir. 1994).

15. *See* Findings 4 to 9, above.

authority, under 30 V.S.A. § 227(b),[16] to open an investigation "on the justness and reasonableness of existing rates" and, under 30 V.S.A. § 218(a),[17] to order substitute rate schedules and make other changes if it finds rate schedules to be "unjust, unreasonable, insufficient, or unjustly discriminatory." Even if there were no legal basis for granting the relief sought by AIR with respect to VEC's approved rate design and tariff in this proceeding, the record in this proceeding might have provided the basis for a recommendation to the Board that it open a separate rate investigation as to the justness and reasonableness of the demand billing provision for VEC's large general service customers. However, as should be clear from the above discussion, no apparent basis exists to support a recommendation to the Board that it open a separate rate investigation.[18]

## V. DISCUSSION WITH RESPECT TO AIR CUSTOMERS' COMPLAINT VS. AIR

According to Mr. Hal Ranney, the campground manager for AIR, AIR has approximately 240 campground sites, of which 51 sites are deeded use and 66 sites are leased for the season.[19] AIR submeters electric service for the 117 sites that are either deeded use or leased for the full summer season.[20] The remaining campsites are available for overnight or short-term stays by customers with motor homes, travel trailers, pop-ups and/or tents, and the electricity provided to

16. Section 227(b) provides in applicable part that "[t]he board, on its own motion, may order an investigation and hearing on the justness and reasonableness of existing rates of a company, subject to supervision under this chapter."

17. Section 218(a) provides:

> When, after opportunity for hearing, the rates, tolls, charges, or schedules are found unjust, unreasonable, insufficient, or unjustly discriminatory, or are found to be preferential or otherwise in violation of a provision of this chapter, the board may order and substitute therefor such rates, tolls, charges, or schedules, and make such changes in any regulations, measurements, practices, or acts of such company relating to its service, and may make such order as will compel the furnishing of such adequate service as shall at such hearing be found by it to be just and reasonable.

18. The fact that AIR's bills for electric usage have significantly increased as a result of the elimination of seasonal distinctions in the demand billing provision of VEC's tariff does not by itself provide any basis for an investigation into whether the billing demand provision is unjust or unreasonable.

19. Prehearing conference tr. 8/31/10 at 7-9.

20. *Id. See, also*, VEC Response at 4.

these campsites is not submetered.[21] Both the submetered and non-submetered sites as well as some bathhouses, a wastewater treatment plant and, possibly, other common facilities, are served by a single VEC meter, and it is this account that is currently subject to the demand charge.[22]

The complaints of the AIR Customers against AIR involve the application of 30 V.S.A. § 249a (Campground Submetering)[23] and related Board Rule 4.800. This proceeding appears to be the first time the Board has had to adjudicate a dispute related to the campground submetering law.

Section 249a of Title 30 permits operators of recreational campgrounds to provide submetered electric service on a non-profit basis in accordance with rules adopted by the Board for such submetering. The Board has adopted Rule 4.800 to regulate campground submetering. The statute, which became effective in 1996, provides a unique exception to the normal requirement in Vermont law that requires retail sellers of electricity to obtain certificates of public good from the Board. Campgrounds (as distinguished, for example, from landlords) appear to be the only group of electric utility customers authorized to submeter and bill their own customers for electric service. It is important to note, however, that there is no requirement that a campground provide submetered electric service; the decision whether to submeter campground users is solely at the discretion of the campground.

Based on a review of the record, the submetering statute and the Board Rule, I conclude that the flat-rate monthly fee as charged by AIR to its submetered electric customers, including

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21. Prehearing conference tr. 8/31/10 at 9.

22. Prehearing conference tr. 8/31/10 at 10-11. AIR apparently has several other accounts with VEC for individual buildings at AIR that are served by separate meters. Based on discussions at the prehearing conference, it is apparently impractical to have a separate meter and account for all the submetered sites due to the physical location and general intermingling of sites that are currently submetered and those that are not.

23. Section 249a provides:

> Notwithstanding the provisions of section 249 of this title or any other provision of this title, a person operating a recreational campground may provide submetered electric service to campground users on a nonprofit basis, if such service is provided in accordance with rules adopted by the board, including rules relating to notice of rates and charges, accuracy of electrical submeters, and reasonable billing and complaint procedures.

the AIR Customers, does not comply with Board Rule 4.800 or with 30 V.S.A. § 249a.[24] First, the assessment of a flat-rate monthly charge on its submetered electric customers is not consistent with the requirement under Rule 4.800 that AIR base its charges for submetered electric service on the customer's measured kWh usage. Second, AIR has provided no basis on which a determination can be made either by its submetered customers or the Board as to whether the submetered electric service was provided on a non-profit basis as required by 30 V.S.A. § 249a.

Board Rule 4.800 does not provide for the assessment of any charge on submetered electric customers that is not based on actual usage. Rule 4.804 (A) provides that "[w]henever a campground charges customers for electricity, the charge shall be based upon the customer's measured kilowatt-hour (KWH) usage." Charging submetered electric customers based only on their actual usage is consistent with the apparent legislative purpose in enacting 30 V.S.A. § 249a to allow for a more appropriate allocation of the costs of providing electricity at campgrounds to individual customers based on actual electric usage, given the variability in electric usage among campground customers.[25] The electric charges imposed by AIR with respect to submetered users deviated significantly from charges based on actual usage through the assessment of a flat-rate monthly charge of $46.20. This is clearly demonstrated by some of the invoices provided by the AIR Customers. For example, an AIR invoice dated June 4, 2010, for one campground customer's electric service indicated 71 kWh of electric usage for the period

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24. Although the Department has not actively participated in this proceeding, prior correspondence indicates that the Department shares the view that AIR's flat-rate monthly charge did not comply with Board Rule 4.800. By letter dated July 27, 2010, to Mr. Fredette, the Department concluded that AIR needs "to make changes in the way they calculate the rate they charge seasonal customers and in the content of their bills in order to comply with Public Service Board Rules." Attachment to Fredette Complaint at 6.

25. The cover sheet for proposed Board Rule 4.800 that was provided by the Board to the Legislative Committee on Administrative Rules and the Vermont Secretary of State includes the following statement:

> This rule was authorized by the Legislature because campground owners desired to allocate costs imposed by heavy electricity users to those users, and not to all campers in the form of higher camping fees.

from May 1 to June 4, 2010, and a total electric charge of $53 (the equivalent of almost $0.75 per kWh of usage). [26]

Furthermore, AIR has provided no basis on which one can conclude that the submetered service is being provided on a non-profit basis as expressly required by 30 V.S.A. § 249a. The AIR account currently subject to the demand charges serves 123 campsites without submetering and certain AIR common facilities in addition to the 117 submetered sites. AIR has been unable to determine what share of the energy usage provided under this account is attributable to various uses.[27] Without such a breakdown of the VEC metered account, it is impossible to determine whether the total amount AIR charges all submetered electric users, including flat-rate monthly charges, is less than or equal to VEC charges related to the submetered sites.

As a campgound with 240 sites and significant common facilities, it is apparent that AIR is a substantial commercial operation. AIR had nearly two years of advance notice of the demand billing provision to adjust for its potential effect and, if it elected to continue submetering deeded use and seasonal leased sites, to determine an appropriate methodology for billing its submetered electric users at the campground consistent with 30 V.S.A. § 249a and Board Rules. The recoupment of demand charges through the imposition of a flat-rate monthly charge on submetered electric users is so clearly contradictory to Board Rule 4.800 that it seems to reflect an unawareness or complete disregard of Board Rules relating to campground submetering and, perhaps, even a lack of good faith. In the course of this proceeding, AIR has

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26. These charges would also appear to violate Board Rule 4.805(B) which provides that "[r]ates charged to customers shall not exceed the campground's most current average cost per KWH for the relevant seasonal rate period." Average cost per KWH is defined in Rule 4.802(3) as:

> the bill for electric power delivered to the campground's master meter (excluding charges for disconnection, late payment, or other similar service charges) divided by the KWH so delivered, and rounded to the nearest tenth of a cent per KWH.

27. Mr. Ranney stated at the prehearing conference that there have been attempts to determine out how much of the electric usage on the applicable VEC account is for site use and how much is for other use, but that it is difficult to determine "when it's all on one meter" and apparently has never been determined. Prehearing Conference Tr. 8/31/10 at 11-12. He indicated that "it's been thought to be about 50 percent." *Id* at 12. It is unclear why the aggregate electric usage on all the submetered sites could not be totaled to determine the proportion of the account's energy usage attributable to the submetered sites. It is conceivable that AIR did, in fact, determine the aggregate usage of the submetered sites as a basis for setting the flat-rate monthly charge, but AIR has not presented any evidence that it did so.

filed no defense or explanation of the flat-rate monthly charge to submetered electric users that was the subject of the complaints filed by the AIR Customers.

As noted above, there is no legal requirement that campgrounds provide submetered electric service. If a campgound voluntarily elects to provide submetered electric service, it is obligated to ensure that it does so on a non-profit basis in accordance with Board Rules. Unlike an electric utility, a campground is not required to file its submetered electric rates with the Board which increases the importance of its good-faith compliance with the campground submetering statute and Board Rules. If campgrounds fail to comply with the applicable statute and rules, the public and the Board are largely dependent on the efforts of campground customers, such as Mr. Poitras and Mr. Fredette, to identify and bring the attention of the Department and the Board to such violations.

For these reasons, it is appropriate to require AIR to reimburse submetered electric customers at AIR for the amount of any flat-rate monthly charges paid by such customers in violation of Board Rule 4.800 and 30 V.S.A. § 249a.[28] I recommend that such reimbursement generally take the form of a credit on 2011 electric bills for those campground customers that return to deeded use or leased sites at the campground for the 2011 summer season and in the form of refunds to non-returning campground customers.

It appears that AIR changed its methodology in September, 2010, for determining electric charges for its submetered electric customers effective with the August, 2010, billing period. Mr. Fredette filed a letter dated September 23, 2010, advising the Board that he had received notice from AIR that it had "modified the method by which it computes electric bills." In Mr. Fredette's view, the modified method was still unacceptable because AIR is "trying to recoup all the Demand Charge for the entire year." As noted in footnote 5 above, Uniprop, the manager for AIR, had previously submitted a letter to the Board (apparently without providing copies to Mr. Poiras or Mr. Fredette) on September 13, 2010, in which it stated that AIR had "unilaterally modified its methodology for allocating and billing electric charges" and advised the Board of

28. It appears that flat-rate monthly electric charges were assessed by AIR for submetered service provided in May, June and July of 2010. Assuming this is correct, the maximum amount of required reimbursements by AIR should be less than $16,500 (3 months x $46.20 x 117 submetered sites = $16,216.20).

Uniprop's position that "this modification complies with relevant ordinances and brings this matter to a close." With its letter to the Board, Uniprop enclosed a notice, dated September 8, 2010, to AIR electric customers indicating that it was eliminating the flat-rate monthly charge on its campground customers and changing to a $0.252 per kWh rate based on actual customer usage.[29] As the Clerk of the Board indicated in a memorandum dated September 20, 2011, Uniprop's letter was deficient as a filing in this docket.[30] No explanatory nor corrective filing was subsequently made by AIR.

A complaint relating to the modified billing methodology adopted by AIR in September, 2010, is not yet properly before the Board. It is clear that AIR regards its new methodology as compliant with Board Rules and the campground submetering statute and that Mr. Fredette regards the new methodology as non-compliant. Board Rule 4.808 establishes the steps and procedure through which a complaint can be brought to the Board for adjudication.[31] Even if a

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29. The rate of $0.252 per kWh was apparently determined by dividing the total amount of AIR electric charges (including all demand charges) during the period from September, 2009, through August, 2010, by the total amount of kWh energy usage by AIR during that period based on the spreadsheet VEC provided to the parties at the prehearing conference. In the affidavit filed by VEC (Exhibit VEC-1), VEC states that VEC takes no position on how AIR should calculate its rates for providing submetered electric service.

30. This memorandum also advised Uniprop:

> that a dismissal of the complaints against AIR by two campground customers requires either a stipulation of dismissal among the parties, presumably through an agreement among the parties that the modification of electric billing practices fully resolves all issues, or a properly filed motion for dismissal or summary judgment that meets the requirements of the Vermont Rules of Civil Procedure. No action will be taken by the Board, and no response by the parties is required, with respect to [Uniprop]'s letter unless and until an appropriate filing is made with the Board and provided to the other parties.

31. 4.808 Complaints

> (A) A customer may complain orally or in writing to the campground about any bill and may request a conference on that bill. A complaint shall state the customer's name, location, and the general nature of the complaint.
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> (B) Upon receiving a complaint, a campground shall:
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> > (1) record the complaint in a complaint log, which shall be made available to customers and the Department of Public Service for inspection at reasonable times;
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> > (2) promptly, thoroughly and completely investigate the complaint and confer with the complainant as needed; and
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> > (3) notify the complainant in writing of the results of the investigation and any proposed action.
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> (C) Complaints not resolved by the campground may be brought to the Consumer Affairs and Public Information Division of the Department of Public Service. If not resolved there, complaints

(continued...)

complaint concerning AIR's new methodology for setting rates were properly before the Board (which is not the case), the current record in this docket provides an insufficient factual basis for a decision on the merits.[32]

In the meantime, the parties, once again, are encouraged to find a satisfactory solution without the necessity of further Board proceedings. Given the uncertainties, time commitments and expense of further litigation, it appears to be in the best interests of the parties for AIR and representatives of submetered electric users to work together to arrive at a method for determining electric charges for such users that is mutually acceptable and in compliance with 30 V.S.A. § 249a and Board Rules.

Although it was not at issue in this proceeding, the record in this docket (including the comments of the Department in its letter of July 27, 2010, to Mr. Fredette)[33] would seem to indicate that AIR's invoices to submetered electric customers may not comply with Board Rules. AIR would be well advised to review its compliance with Board Rules 4.805 (Registration of Campers) and Rule 4.806 (Bills) before the start of its 2011 summer season.

## VI. CONCLUSIONS

For the reasons set forth above, I conclude with respect to AIR's complaint against VEC that there is no basis to support AIR's complaint and recommend to the Board that it dismiss AIR's complaint against VEC.

Also, as set forth above, I conclude with respect to the complaint of the AIR Customers against AIR, that the flat-rate monthly fee as charged by AIR to its submetered electric customers does not comply with Board Rule 4.800 or with 30 V.S.A. § 249a. I recommend that the Board grant the following relief with respect to AIR's non-compliance:

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31. (...continued)
may be brought to the Public Service Board.

32. In addition to establishing a factual record, relevant legal issues would appear to include the following:
a. Is AIR permitted to include in the electric charges to its submetered electric customers a portion of the monthly demand charges billed by VEC during the May to October season?
b. Is AIR permitted to include in its electric charges to such customers a portion of the monthly demand charges it incurs during off-season months, or is its recovery of such demand charges limited under Board Rule 4.800 solely to demand charges billed monthly to AIR by VEC during AIR's May to October season?

33. Attachment to Fredette Petition at 6.

1. AIR shall credit the accounts of its continuing submetered electric customers in an amount equal to the total amount paid by such customer for flat-rate monthly electric charges, including taxes, during 2010. To the extent that such credit is not fully utilized during the 2011 season, AIR shall refund to such customer the unused balance of the credit no later than November 15, 2011.

2. With respect to any submetered electric customer who paid flat-rate monthly electric charges to Apple Island Resort in 2010 but who does not own or lease a site at AIR during the 2011 summer season, AIR shall make a refund to such customer in an amount equal to total amount paid by such customer for flat-rate monthly electric charges, including taxes, during 2010. Apple Island Resort shall make such refund payments no later than November 15, 2011.

This proposal for decision is made to the Board pursuant to 30 V.S.A. § 8 and has been served on all parties to this proceeding in accordance with 3 V.S.A. § 811.

Dated at Montpelier, Vermont, this 9th day of March, 2011.

s/ Lars Bang-Jensen
Lars Bang-Jensen
Hearing Officer

## VII. BOARD DISCUSSION

The Board received two comments on the proposal for decision related to the complaint of the AIR Customers against AIR and no comments related to AIR's complaint against VEC. Mr. William Fredette, one of the AIR Customers, submitted comments on the proposal for decision on February 21, 2011. Mr. Roger Zlotoff, the President of Unipop, which manages the AIR campground, submitted comments on behalf of AIR on February 22, 2011.

Mr. Fredette does not raise any specific issues about the proposal for decision and indicates that the proposal for decision addresses the issues he raised about AIR's flat-rate monthly fee. Most of Mr. Fredette's comments concern his attempts "to get clarity with AIR" on how the new billing methodology was calculated, his belief that the new billing methodology is non-compliant, and his hopes for a resolution of the continuing disputes.

AIR, however, strongly objects to the proposal for decision related to the complaint of the AIR Customers. In particular, AIR challenges the recommendation that a credit or refund of all flat-rate monthly charges be made by AIR, and proposes an alternate remedy. AIR states that AIR only sought to "fairly allocate and recoup the cost" of the demand charge, that there was no intent to earn a profit on electric service and that no evidence was provided that the submetered electric service was profitable for AIR. AIR also objects to any suggestion that AIR's behavior in establishing a flat-rate monthly charge to recoup the VEC demand charge may have reflected a lack of good faith. Finally, AIR rejects the Hearing Officer's encouragement to the parties that AIR and representatives of submetered electric users work together to arrive at a mutually acceptable method for determining electric charges that complies with applicable law and Board rules. AIR regards AIR's new billing methodology as in accord with relevant law.

In addressing AIR's objections, the Board observes that AIR had the opportunity to present evidence and make arguments in response to the complaints of the AIR Customers, but

failed to do so during the course of this proceeding.[34] In its comments, AIR raises issues for the first time that it could have addressed during the course of the proceeding.

There is no evidence in the record as to how AIR determined the amount of the flat-rate monthly charge or to support any conclusion as to whether submetered electric service was or was not provided on a non-profit basis.[35] AIR suggests in its comments that the burden of proof was on the AIR Customers to show that AIR did not provide service on a non-profit basis consistent with 30 V.S.A. § 249a. However, to place this burden on the AIR Customers seems inappropriate given the statutory obligation imposed on a campground to ensure that its submetered service is provided on a non-profit basis and AIR's unique knowledge about how the charges were determined.

In any case, the question of whether the service was provided on a non-profit basis (as to which the proposal for decision reaches no conclusion) is irrelevant to the conclusion that the flat-rate monthly fee did not comply with the statute or Board rules. Even a cursory review of Board Rule 4.800 should have made it clear to AIR that flat-rate monthly fees for submetered campground customers are not permitted. Campgrounds may only bill submetered campground customers based on their actual electric usage. As a large campground with experience submetering campground customers under the campground submetering statute and Board rules, AIR's behavior in seeking to impose flat-rate monthly fees seems inexplicable, especially in light of the long period AIR had to adjust to the potential impact of the demand billing provision in VEC's tariff. During the course of the proceeding, AIR presented no justification or explanation for its imposition of flat-rate monthly fees on its submetered campground customers.

AIR rejects the recommended relief set forth in the proposal for decision. As an alternative to customer credits or refunds of flat-rate charges, AIR proposes that each submetered customer be either charged or credited the difference between the amount such customer paid in

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34. Mr. Hal Ranney, AIR's campground manager, did participate in the prehearing conference, but AIR did not submit any evidence for the record, provide any statement disputing the facts presented by the complainants or file any form of brief or argument in response to the complaints as expressly provided in the schedule established for this proceeding, which is set forth in the Prehearing Conference Memorandum and Order of September 10, 2010, in this docket.

35. See discussion on page 12.

electric charges in 2010 and the amount such customer would have paid if the charges had been based on actual usage (with the VEC demand charge being included in determining the applicable per kWh rate). However, without determining the share of the relevant account charges related to usage by submetered customers, it is not possible to make such a calculation. And there is nothing in the record which would enable such a calculation to be made. More fundamentally, however, what AIR is proposing may result simply in a reallocation of charges among submetered customers without any economic consequence for AIR. As the proposal for decision notes, there is no legal requirement that a campground provide submetered electric service. If a campground elects to submeter its customers, it has a legal obligation to do so in accordance with Board rules. Under the circumstances, AIR should not be able shift the economic consequences for its own failure to comply with applicable rules to its customers.

The issue of whether AIR's new billing methodology for calculating electric charges for submetered campground customers is compliant with 30 V.S.A. § 249a and Board Rule 4.800 is not currently before the Board. Nevertheless, without expressing any view as to whether AIR's confidence that the new methodology is compliant with applicable law is well founded, the Board is disappointed that AIR has chosen to reject the Hearing Officer's advice that AIR and representatives of the submetered campground customers work together to resolve any possible issues. It would seem to be in the interest of all parties to find a satisfactory solution and to avoid further Board proceedings.

Accordingly, the Board adopts the findings, conclusions and recommendations of the proposal for decision. To avoid any misunderstanding as to the breadth of this Order, the Board observes that the ordered refunds and credits relate only to the flat-rate monthly fees, but not to the per kWh usage charges paid by submetered campground customers to AIR during the 2010 season. For future reference, the Board also would like to clarify that the discussion on pages 7-8 of demand billing charges does not relate to all demand billing provisions, but primarily to those that set and impose a demand ratchet charge over a period of many months based on a single demand peak.

## VII. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings, conclusions and recommendations of the Hearing Officer are adopted.

2. The complaint by Apple Island Resort against Vermont Electric Cooperative, Inc., is dismissed.

3. Apple Island Resort shall credit the accounts of its continuing submetered electric customers in an amount equal to total amount of flat-rate monthly electric charges, including taxes, paid by such customer during 2010. To the extent that such credit is not fully utilized during the 2011 season, AIR shall refund to such customer the unused balance of the credit no later than November 15, 2011.

3. With respect to any submetered electric customer who paid flat-rate monthly electric charges to Apple Island Resort in 2010 but who does not own or lease a site at Apple Island Resort during the 2011 summer season, Apple Island Resort shall make a refund to such customer in an amount equal to total amount of flat-rate monthly electric charges, including taxes, paid by such customer during 2010. Apple Island Resort shall make such refund payments no later than November 15, 2011.

Dated at Montpelier, Vermont, this 16th day of March, 2011.

s/ James Volz )
)
) PUBLIC SERVICE
)
s/ David C. Coen ) BOARD
)
) OF VERMONT
s/ John D. Burke )

OFFICE OF THE CLERK

FILED: March 16, 2011

ATTEST: s/ Susan M. Hudson
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*